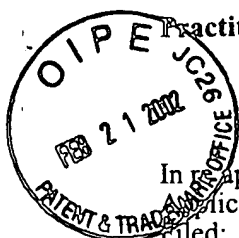


AF/3A2+/18

PATENT



Practitioner's Docket No. 1975.99C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Heath, Robert C.; Stubbs, Jett E.  
Application No.: 09/491,094 Group No.: 3727  
Filed: 01/24/2000 Examiner: R. Hylton  
For: Disposable Lid for a Cup

Assistant Commissioner for Patents  
Washington, D.C. 20231

RECEIVED  
MAR -4 2002  
TC 3100 MAIL ROOM

TRANSMITTAL OF APPEAL BRIEF (PATENT APPLICATION--37 C.F.R. 1.192)

1. Transmitted herewith, in triplicate, is the APPEAL BRIEF in this application, with respect to the Notice of Appeal filed on September 12, 2001.

2. STATUS OF APPLICANT

This application is on behalf of a small entity. A statement was already filed.

3. FEE FOR FILING APPEAL BRIEF

Pursuant to 37 C.F.R. 1.17(c), the fee for filing the Appeal Brief is:

Small entity \$160.00

Appeal Brief fee due \$ 160.00

4. EXTENSION OF TERM

The proceedings herein are for a patent application and the provisions of 37 C.F.R. section 1.136 apply.

Applicant believes that no extension of term is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

CERTIFICATE OF MAILING/TRANSMISSION (37 C.F.R. 1.8(a))

I hereby certify that, on the date shown below, this correspondence is being:

MAILING

☒ deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Date:

11/13/01

FACSIMILE

☐ transmitted by facsimile to the Patent and Trademark Office.

Signature

Frank J. Catalano

(type or print name of person certifying)

5. TOTAL FEE DUE

The total fee due is:

Appeal brief fee \$ 160.00

Extension fee (if any) \$

**TOTAL FEE DUE \$ 160.00**

6. FEE PAYMENT

Attached is a check in the sum of \$ 160.00.


A duplicate of this transmittal is attached.

7. FEE DEFICIENCY

If any additional extension and/or fee is required, this is a request therefor and to charge Account No. 03-1127. If any additional fee for claims is required, charge Account No. 03-1127.

Date:

11/13/01



Frank J. Catalano  
Registration No. 25836  
Frank J. Catalano, P.C.  
810 S. Cincinnati, Suite 405  
Tulsa, Ok 74119  
USA  
918-584-8787  
Customer No. 07303

Docket No. 1975.99C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: HEATH, ROBERT C. ET AL

SERIAL NO.: 09/491,094

FILED: January 24, 2000

FOR: DISPOSABLE LID FOR A CUP

GROUP: 3727

EXAMINER: R. Hylton

I HEREBY CERTIFY THAT THIS CORRESPONDENCE  
IS BEING DEPOSITED WITH THE UNITED STATES  
POSTAL SERVICE AS FIRST CLASS MAIL IN AN  
ENVELOPE ADDRESSED TO: COMMISSIONER OF  
PATENTS AND TRADEMARKS, WASHINGTON, D.C.  
20231 ON THE DATE SHOWN:

Date: 11/13/01

FRANK J. CATALANO

ASSISTANT COMMISSIONER FOR PATENTS  
WASHINGTON, D.C. 20231

ATTENTION: BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT'S BRIEF (37 CFR 1.192)

This brief is in furtherance of the Notice of Appeal filed in this case on 9/12/01.

The fees required under §1.17(f) and any required petition for extension of time for  
filing this brief and fees therefor are dealt with in the accompanying Transmittal of Appeal  
Brief.

This brief is transmitted in triplicate.

This brief contains these items under the following headings and in the order set  
forth below (37 CFR 1.192(c)):

- I. REAL PARTY INTEREST
- II. RELATED APPEALS AND INTERFERENCES
- III. STATUS OF CLAIMS
- IV. STATUS OF AMENDMENTS

COPY OF PAPERS  
ORIGINALLY FILED

#11  
3/12/02  
R1194  
173

RECEIVED  
HAR-4  
MAR 4 2002  
TC 3705 MAH RO 4

- V. SUMMARY OF INVENTION
- VI. ISSUES
- VII. GROUPING OF CLAIMS
- VIII. ARGUMENT
- IX. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

#### **I. REAL PARTY INTEREST**

The real parties in interest in this appeal are the parties named in the caption of this Brief.

#### **II. RELATED APPEALS AND INTERFERENCES**

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

#### **III. STATUS OF CLAIMS (37 CFR 1.192(c)(1))**

##### **A. TOTAL NUMBER OF CLAIMS IN APPLICATION**

The claims in the application are claims 1-10.

##### **B. STATUS OF ALL THE CLAIMS**

- 1. Claims pending: 1-10.
- 2. Claims rejected: 1-3.
- 3. Claims allowed: 4-10.

##### **C. CLAIMS ON APPEAL**

Claims 1-3 are on appeal.

#### **IV. STATUS OF AMENDMENTS**

All amendments have been entered.

#### **V. SUMMARY OF INVENTION (37 CFR 1.192(c)(3))**

The disposable lid for a cup defined in claim 1 combines an annular clamp adapted to be seated on a rim of the cup with a spout which extends upwardly from and entirely above the top of the clamp to a discharge port at its apex. The clamp has inner and outer lips which grip the inner and outer walls of the lip of the cup inserted therebetween. The inner wall of the clamp and the inner wall of the spout converge smoothly to the discharge port.

The spout of the disposable lid is further defined in claim 2. The spout is frustoconical and has a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder. The base inside diameter of the spout is equal to the top inside diameter of the clamp so that the inner wall of the clamp and the inner wall of the spout converge smoothly to the discharge port.

The clamp of the disposable lid is further defined in claim 3. The clamp has an annular rim with inner and outer edges and a bottom face adapted to be seated on the rim of the cup, the inner lip of the clamp extending downwardly from the inner edge of the rim and the outer lip of the clamp extending downwardly from the outer edge of the rim.

#### **VI. ISSUES (37 CFR 1.192(c)(4))**

Whether claims 1-3 are unpatentable under 35 U.S.C. § 103 over Freeman in view of Meyers.

#### **VII. GROUPING OF CLAIMS (37 CFR 1.192(c)(5))**

The rejected claims do not stand or fall together. They may be grouped as follows:

Group A - Claim 1.

Group B - Claim 2.

Group C - Claim 3.

#### **VIIID. ARGUMENT - REJECTION UNDER 35 USC 103**

##### **(37 CFR 1.192(c)(8)(iv))**

The Examiner has rejected claims 1-3 under 35 U.S.C. § 103 as unpatentable over Freeman in view of Meyers.

In an Advisory Action issued on August 23, 2001, the Examiner notes:

Regarding the rejection of the amended claims, the prior art as applied in the Office Action mailed June 12, 2001 is still applicable. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the lid of Freeman et al. in view of Meyers to provide the inner wall of the clamp with sufficient length to grip the inner surface of an associated cup lip.

In the Office Action mailed June 12, 2001, the Examiner argues as follows:

Freeman discloses a lid having a clamp portion and an upwardly extending discharge spout, the discharge spout being entirely above the clamp portion. The inner wall of the clamp is seen in figures 2 and 5 to engage the upper, innermost portion of the cup rim. The inner wall of the clamp and an inner wall of the discharge spout does not smoothly converge to a discharge port of the discharge spout.

Meyers teaches a lid having an annular clamp 50 adapted to be seated on a cup rim and an upwardly extending discharge spout, an inner wall of the clamp and an inner wall of the discharge spout smoothly converge to a discharge port of the discharge spout.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of an inner wall of the clamp and an inner wall of the discharge spout smoothly converging to a discharge port of the discharge spout as taught by Meyers to the lid of Freeman by moving the inner wall of the clamp radially inwardly until such convergence is met. Doing so would allow complete drainage and a smooth flow of fluid from the lid upon attachment to a liquid filled container.

Regarding the clamp of Freeman, it is 'adapted to be seated on a rim of a cup and to grip inner and outer walls of the a lip of the cup'. The claim limitation of 'adapted to' does not require that the function actually occurs, merely that the structure is capable of performing the said function. Thus, Freeman meets the claim whether or not it is modified by Meyers to move

the inner wall radially inwardly.

Before addressing the Claim Groupings, some key requirements of Freeman and Meyers deserve special attention.

#### Freeman

As the Examiner notes, Freeman does not teach an inner wall of a clamp which smoothly converges with an inner wall of a discharge spout. In fact, Freeman does not suggest or discuss any desirability of a smooth surface convergence of its spout with any clamp. Furthermore, Freeman does not teach an inner wall of a clamp at all. Freeman does not suggest or discuss a clamp, but merely shows an outer lower lip of a closure 10 engaged around the outer surface of the upper lip of the cup 11. If the cup 11 is distorted (as normally occurs when the user applies pressure to grip the cup), the lip of the cup 11 will separate from the lip of Freeman's closure 10 at the areas of applied pressure.

#### Meyers

With respect to Meyers, the Examiner indicates that an "annular clamp 50" has an "upwardly extending discharge spout." This is not true in the sense of the present application in which the lexicographer requires the entire spout to be above the clamp. As seen in Figure 6, Meyers' spout extends below the clamp and the lid is structurally extended downwardly and inwardly from the clamp inner lip. This configuration is not optional to Meyers. Meyers specifically asserts that:

When in place, the lid further assures that the liquids inside the vessel will remain in a location whereby the overall center of gravity (including the vessel, lid and liquid contents) at any angle of tilt will be offset from the reaction force vector at the contact point in the direction tending to urge the vessel back to its upright position. (Col.2, Ln.6-13).

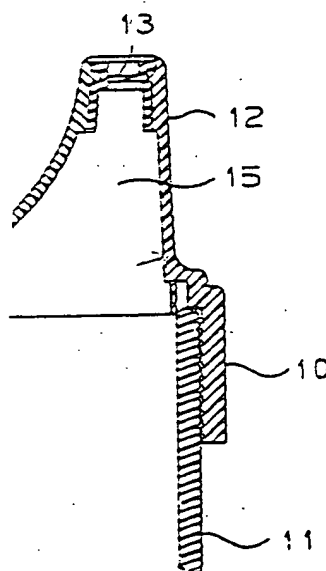
In other words, the spout of Meyers' lid must be below the clamp 50 as shown or the true

teaching of Meyers (a no-tilt cup) will be defeated by a higher center of gravity. Furthermore, Meyers does not teach or suggest the desirability or structure of a clamp inner wall which smoothly converges with a discharge port inner wall.

It is impossible to apply any portion of Meyers' teaching to the present invention without defeating the teachings of Meyers.

#### GROUP A

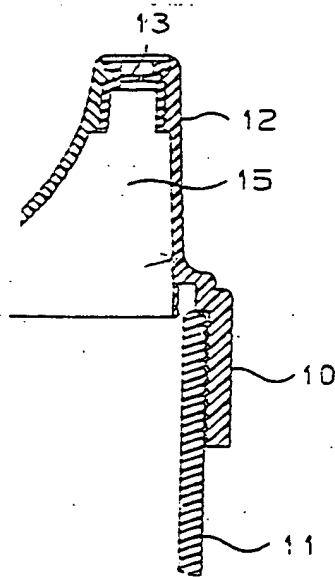
Claims 1-3 all require (a) that the clamp have lips for gripping both walls of the lip of the cup inserted therebetween and (b) that the spout extends upwardly from and entirely above the tip of the clamp. The Examiner says in the June 12, 2001 Office Action that this obviously results if we take Freeman, which looks like this:



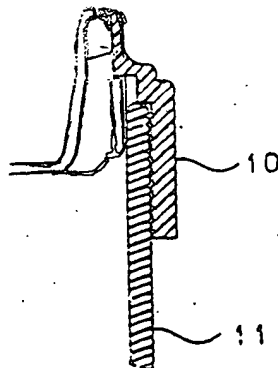
*Freeman Fig. 2*



and apply "Meyers to the lid of Freeman by moving the inner wall of the clamp radially inwardly until such convergence is met. Such a modification looks like this:

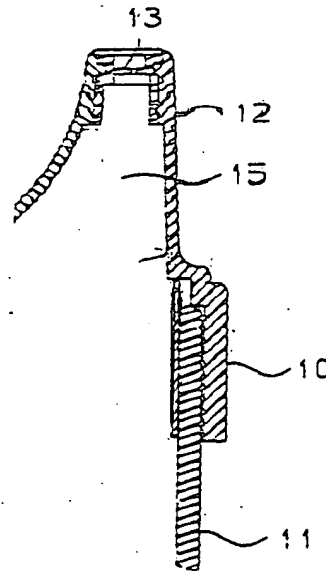


This is still not the structure taught by Applicants. There is no inner clamp lip which grips against the inside wall of the cup. We could look beyond the Examiner's proposed combination and further modify this by using Meyers as follows:



However, such a modification defeats Applicants' requirement that the spout be entirely above the clamp.

If we consider the Examiner's Advisory Action comment, we could lengthen the inner wall of Freeman's clamp as follows: ———



However, this does not provide a smooth convergence between the spout and the clamp.

It is, therefore, respectfully submitted that the invention of claims 1, 2 and 3 are not unpatentable over Freeman in view of Meyers.

#### GROUP B

Claims 2 and 3 stand apart from claim 1 in that they further require: (a) a "frustoconical" spout; (b) having a "truncation specifically formed in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder" and (c) "a base inside diameter equal to a top inside diameter of said clamp." In one line, this looks like:



Meyers has nothing resembling such a frustoconical horizontal cylinder truncation.

Comparing Applicants' Figure 1 to Freeman's Figure 3, Freeman has no "truncation" found in the shape defined by Applicants.

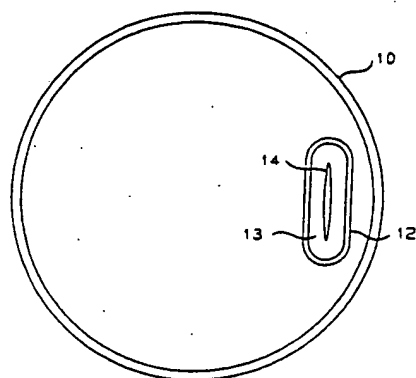


Figure 3

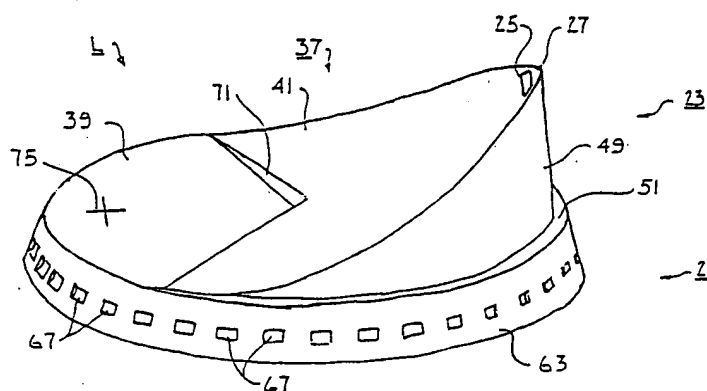


Fig. 1

Meyers has no teaching in this regard.

Therefore, Applicants respectfully submit that claims 2 and 3 are further patentable over the cited references.

### GROUP C

Claim 3 stands apart from claims 1 and 2 in that it requires a rim having a "bottom face adapted to be seated on a rim of the cup" and "an inner lip" and "an outer lip" which extend "downwardly from said outer edge(s)."

Freeman has no "bottom face" and has no "inner lip" as above required.

Meyers, as best seen in Figure 7, has an arcuate "bottom face" and, as best seen in Figure 4, a flat cup rim. The bottom face therefore cannot contact the cup rim if the walls of the groove 50 snugly fit the rim, as Meyers teaches (Col.4, Ln.11-12).

## **CONCLUSION**

For the reasons stated above, applicant's claimed device is not rendered obvious by these references. Furthermore, the claims of Groups A and B are allowable for their own unique reasons. Reversal of the rejection of all claims is respectfully requested.

## **IX. APPENDIX OF CLAIMS (37 C.F.R. .192(c)(9))**

The text of the claims involved in the appeal are:

1. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a spout extending upwardly from a top of said clamp to a discharge port at an apex thereof, an inner wall of said clamp and an inner wall of said spout converging smoothly to said discharge port, said spout being entirely above said clamp.

2. A disposable lid for a cup comprising an annular clamp adapted to be seated on a rim of the cup, said clamp having inner and outer lips to grip inner and outer walls of a lip of the cup inserted therebetween and a frustoconical spout extending upwardly from said rim to a discharge port at an apex thereof, said spout having a truncation in the shape of a horizontal plane tangent to a bottom wall of a horizontal cylinder and a base inside diameter equal to a top inside diameter of said clamp wherein an inner wall of said clamp and an inner wall of said spout converge smoothly to said discharge port.

3. A lid according to claim 2, said clamp comprising an annular rim having inner and outer edges and a bottom face adapted to be seated on a rim of the cup, an inner lip extending downwardly from said inner edge and an outer lip extending downwardly from said outer edge of said annular rim, said inner and outer lips being cooperable to grip a lip of the cup inserted therebetween.

Respectfully submitted,

FRANK J. CATALANO, P.C.

BY 

Frank J. Catalano

Registration No. 25,836

810 S. Cincinnati, Suite 405

Tulsa, OK 74119

(918) 584-8787